



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,796	06/23/2003	Morris Samelson	P-5435(DIV1)	7988

30553 7590 03/05/2004

GUNN, LEE & HANOR
700 N. ST. MARY'S STREET
SUITE 1500
SAN ANTONIO, TX 78205

EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/601,796	SAMELSON ET AL.	
	Examiner	Art Unit	
	Lakshmi S Channavajjala	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/23/03; 7/28/03 & 8/5/03</u> | 6) <input type="checkbox"/> Other: ____ |

Art Unit: 1615

DETAILED ACTION

Claims 1-16 are pending in the instant application.

Claim Rejections - 35 USC § 112

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Instant claim states 100% of Processed Dead Sea minerals has a granularity of less than 10 mesh and 100% less than 1.0 mm. It is unclear from the claim if 1.0 mm refers to the particle size and if the claim requires both the claimed mesh size and particle size simultaneously. Examiner interprets the claim as 100% minerals having a particle size less than 1.0mm and which has granularity of less than 10 mesh size. A clarification is requested.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending

Art Unit: 1615

Application No. 10/601,795. Although the conflicting claims are not identical, they are not patentably distinct from each other because the method of preparing a cosmetic composition of the co-pending application also describes instant claimed composition i.e., comprising at least 50% processed Dead Sea minerals in an all-natural carrier medium containing oils, essential oil blends, wax etc. Further, the compositions of instant claims and the co-pending application are used for the same skin application. Therefore, preparing instant composition would have been obvious for one of an ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1074 245 (EP '245) alone or EP '245 in view of US 5,997,889 to Durr et al ('889).

EP '245 teaches cosmetic composition containing Dead Sea mineral salts that are granular in nature, for the treatment of skin itching caused by Psoriasis or for skin exfoliating or scrubbing. The composition of EP '245 contains 5% Dead Sea salts and other herbs and the instant claimed aromatic essences such as lavender, chamomile, calendula etc., for skin relaxing or other therapeutic effects (Table on page 9 continued on page 10). EP '245 also teaches

Art Unit: 1615

emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043).

EP fails to teach the claimed limitations, at least 50% processed Dead Sea mineral particles, the specifically claimed palm oil, coconut oils, particles of claimed mesh and granularity. However, EP '245 suggests that the composition contains granular Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (Paragraphs 0019, 0020 & 1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin. The process of preparing the composition (page 7) of EP '245 involves a homogenous mixing. Instant application also describes the use of ultra fine Dead Sea salts for a homogenous mixing so as to maintain uniformity of the solid suspension. Further, instant application describes Dead Sea mineral salts for the same skin applications as that of EP '245. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the amount of Dead Sea salts, and the size of salt granules in preparation of the cosmetic composition such that a uniform or a homogenous composition is obtained. Further, inclusion of various cosmetic additives and aroma agents, with an expectation to achieve an effective treatment for reducing itching and increasing smoothness of skin would have been obvious for a skilled artisan because EP '245 teaches herbs, aromatic agents help in protecting skin (Dead Sea salt) from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents).

'889 teaches hand and body creme for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and

Art Unit: 1615

emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043).

EP fails to teach the claimed limitations, at least 50% processed Dead Sea mineral particles, the specifically claimed palm oil, coconut oils, particles of claimed mesh and granularity. However, EP '245 suggests that the composition contains granular Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (Paragraphs 0019, 0020 & 1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin. The process of preparing the composition (page 7) of EP '245 involves a homogenous mixing. Instant application also describes the use of ultra fine Dead Sea salts for a homogenous mixing so as to maintain uniformity of the solid suspension. Further, instant application describes Dead Sea mineral salts for the same skin applications as that of EP '245. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the amount of Dead Sea salts, and the size of salt granules in preparation of the cosmetic composition such that a uniform or a homogenous composition is obtained. Further, inclusion of various cosmetic additives and aroma agents, with an expectation to achieve an effective treatment for reducing itching and increasing smoothness of skin would have been obvious for a skilled artisan because EP '245 teaches herbs, aromatic agents help in protecting skin (Dead Sea salt) from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents).

'889 teaches hand and body creme for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and

Art Unit: 1615

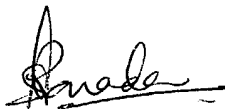
conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). '889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the emollients such as jojoba oil, waxes and fragrances/essential oils of '889 in the composition EP '245 because '889 teaches the ingredients for providing relief to psoriatic or itchy skin conditions and EP '245 desires a skin composition for treating psoriasis or itchy skin. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating psoriasis.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala

Examiner

Art Unit 1615

March 2, 2004